(14)

No. 99-1038

Supreme Court, U.S.
FILED
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IN THE

Supreme Court of the United States

EASTERN ASSOCIATED COAL CORPORATION,
Petitioner,

v.

UNITED MINE WORKERS OF AMERICA, DISTRICT 17;
LOCAL 1503, UNITED MINE WORKERS OF AMERICA,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED DECEMBER 17, 1999
CERTIORARI GRANTED MARCH 20, 2000

34 pp

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The appendix to the petition for certiorari contains the following material which is omitted from the Joint Appendix:

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
(CHARLESTON)

CIVIL DOCKET FOR CASE #: 97-CV-819

EASTERN ASSOCIATED COAL CORP.
Plaintiff,

v.

UNITED MINE WORKERS OF AMERICA, District 17, *et al*
Defendant.

Filed: 08/18/97

DOCKET ENTRIES

DATE	NO.	PROCEEDINGS
8/18/97	1	COMPLAINT Filing Fee $ 150.00 Receipt # 466 (nfs) [Entry date 08/21/97]
9/4/97	4	ANSWER to Complaint and COUNTER-CLAIM by UMWA, District 17, Local Union No. 1503 (Attorney Kevin F. Fagan) against Eastern Associated. (skh)
9/24/97	6	ANSWER/REPLY by Eastern Associated to defts' [4-2] counterclaim. (skh)
11/21/97	10	MOTION by UMWA, District 17, Local Union No. 1503 for Summary Judgment. (pdb)
11/21/97	11	MEMORANDUM by UMWA, District 17, Local Union No. 1503 in support of [10-1] motion for Summary Judgment. (pdb)
11/21/97	12	MOTION by Eastern Associated for Summary Judgment. (skh)

DATE	NO.	PROCEEDINGS
11/21/97	13	MEMORANDUM by Eastern Associated in support of [12-1] motion for Summary Judgment. (skh)
12/12/97	15	RESPONSE by Eastern Associated to defts' [10-1] motion for Summary Judgment. (skh)
12/12/97	16	RESPONSE by UMWA, District 17, Local Union No. 1503 to pltf's [13-1] memorandum in support of motion for summary judgment. (skh) [Entry date 12/15/97]
12/19/97	17	REPLY by Eastern Associated to defts' [16-1] response to pltf's [13-1] memorandum in support of its motion for summary judgment. (skh) [Entry date 12/22/97]
12/19/97	18	REPLY BRIEF by UMWA, District 17, Local Union No. 1503 to pltf's response to defts' [10-1] motion for Summary Judgment. (pdb) [Entry date 12/22/97]
9/30/98	23	MEMORANDUM ORDER denying pltf's [12-1] motion for Summary Judgment; granting defts' [10-1] motion for Summary Judgment. (signed by Judge John T. Copenhaver Jr.) (cc: attys) (pdb)
9/30/98	24	JUDGMENT ORDER denying pltf's [12-1] motion for Summary Judgment; granting defts' [10-1] motion for Summary Judgment; affirming the arbitration award of 8/1/97; dismissing this action with prejudice and striking it from the court's docket, with each party to bear their own costs, all matters in this case being resolved. (signed by Judge John T. Copenhaver Jr.) (cc: attys) (pdb)

DATE	NO.	PROCEEDINGS
10/9/98	25	NOTICE OF APPEAL by Eastern Associated Coal Corp. of [23-1] memorandum order and [24-1] judgment order entered September 30, 1998. FILING FEE $150.00; RECEIPT #3010. (skh) [Entry date 10/13/98]
10/9/98	26	MOTION by Eastern Associated for stay of judgment pending appeal. (skh) [Entry date 10/13/98]
10/9/98	27	MEMORANDUM by Eastern Associated in support of [26-1] motion for stay of judgment pending appeal. (skh) [Entry date 10/13/98]
10/21/98	29	COMBINED MEMORANDUM by UMWA, District 17, Local Union No. 1503 in opposition to pltf's [26-1] motion for stay; integrated with following entry. (pdb)
10/21/98	29	REQUEST/MOTION by UMWA, District 17, Local Union No. 1503 for immediate reinstatement of the grievant; integrated with previous entry. (pdb)
10/29/98	33	COMBINED MEMORANDUM IN REPLY by Eastern Associated to defts' [29-1] opposition to [26-1] motion for stay; integrated with following entry. (pdb)
10/29/98	33	MEMORANDUM by Eastern Associated in opposition to defts' [29-1] request/motion for immediate reinstatement; integrated with previous entry. (pdb)
11/9/98	36	REPLY/RESPONSE by UMWA, District 17, Local Union No. 1503 to pltf's [33-1] response in opposition to defts' [29-1]

DATE	NO.	PROCEEDINGS
		request/motion for immediate reinstatement of grievant. (skh)
11/9/98	38	REPLY by Eastern Associated to defts' [33-1] memorandum in opposition to pltf's [26-1] motion for stay of judgment pending appeal. (skh) [Entry date 11/10/98]
11/10/98	39	LETTER-FORM SURREPLY by UMWA, District 17, Local Union No. 1503 in support of [29-1] motion for immediate reinstatement of the grievant. (skh)
2/4/99	40	ORDER granting pltf's [26-1] motion for stay of the court's 9/30/98 judgment order; denying deft's [29-1] motion for immediate reinstatement of grievant. (signed by Judge John T. Copenhaver Jr.) (cc: attys) (skh)

UNITED STATES COURT OF APPEALS
FOURTH CIRCUIT

No. 98-2527

EASTERN ASSOCIATED COAL COMPANY
Plaintiff-Appellant,

v.

UNITED MINE WORKERS OF AMERICA, DISTRICT 17
Defendant-Appellee

LOCAL 1503, UNITED MINE WORKERS OF AMERICA
Defendant-Appellee

DOCKET ENTRIES

DATE	PROCEEDINGS
10/16/98	Civil case docketed. (ctd)
11/30/98	Brief joint appendix filed by Appellant Eastern Associated. Type of Service: PM Copies of Brief: 8 # brf pages: 32 Copies of apx: 6 # apx pages: 74 Sufficient / N]: y 2-sided copying: y [98-2527] Appellee brief due 12/30/98 for Local 1503 UMWA, for District 17 UMWA. (rhs)
12/30/98	Brief filed by Appellee District 17 UMWA, Appellee Local 1503 UMWA. Type of Service: PM Copies: 8 # brf pages: 39 Sufficient / N] : y. . . [98-2527] (rhs)
1/19/99	Reply brief filed by Appellant Eastern Associated. Type of Service: PM Copies of brief: 8 # brf pages: 19. Sufficient / N] : y. . . [98-2527] (rba)

DATE	PROCEEDINGS
5/6/99	Oral argument heard. William D. Ryan for Appellee Local 1503 UMWA, Appellee District 17 UMWA, Ronald E. Meisburg for Appellant Eastern Associated Courtroom Deputy: JPH. [98-2527] (jph)
8/20/99	Unpublished per curiam opinion filed. [98-2527] (ctd)
8/20/99	Judgment order filed. Decision: affirmed. EOD Date: 8/20/99. [98-2527] (ctd)
9/3/99	Petition filed by Appellant Eastern Associated for rehearing [3050909-1], for rehearing en banc. Number of copies filed: 20 [3050909-2] [98-2527] (ctd)
9/20/99	COURT ORDER filed denying motion for rehearing [3050909-1] EOD Date: 9/20/99., denying motion for rehearing en banc [3050909-2] EOD Date: 9/20/99. Copies to all counsel. [98-2527] (dad)
12/27/99	Supreme Court notice that petition for certiorari was filed on 12/17/99. Spct No.: 99-1038 Spct Pty 1: Eastern Assoc Coal Corp. Spct Pty 2: UMW of America, Dist 17, et al. [98-2527] (cw)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

Civil Action No. 2:97-0819

EASTERN ASSOCIATED COAL CORP.,
Plaintiff,

AND

UNITED MINE WORKERS OF AMERICA, DISTRICT 17,
AND LOCAL UNION No. 1503,
Defendant.

COMPLAINT

Plaintiff, Eastern Associated Coal Corp. ("EACC"), by counsel, for its complaint hereby alleges:

JURISDICTION AND VENUE

1. This is an action to vacate a labor arbitration award issued pursuant to the parties' collective bargaining agreement. The action arises under § 301 of the National Labor Relations Act ("Act"), as amended, 29 U.S.C. § 185, pursuant to which this Court has jurisdiction and venue.

PARTIES

2. EACC is a corporation licensed to do business in West Virginia, and is an employer engaged in commerce within the meaning of the Act, 29 U.S.C. §§ 152(2) and (7). EACC is a party to a collective bargaining agreement with the International Union, United Mine Workers of American, known as the National Bituminous Coal Wage Agreement of 1993 ("the Wage Agreement").

3. Defendant District 17, United Mine Workers of America ("District 17"), is an unincorporated association within the meaning of the Act. District 17 is bound by the Wage Agreement and is authorized to carry out the work of the UMWA, including the processing of grievances arising under the Wage Agreement. District 17 is engaged in representing and acting on behalf of its members, including employees of EACC within the jurisdiction of this Court.

4. Defendant Local Union No. 1503, United Mine Workers of America ("Local 1503"), is an unincorporated association and a labor organization within the meaning of the Act. Local 1503 is bound by the Wage Agreement and is engaged in representing its members, including employees of EACC within the jurisdiction of this Court.

STATEMENT OF FACTS

The Collective Bargaining Agreements

5. The Wage Agreement has been in full force and effect at all times material to the matters and things alleged herein, and currently remains in full force and effect.

6. Article XXIII of the Wage Agreement provides a four step grievance and arbitration procedure for the disposition of classified employee grievances, culminating in arbitration.

The Federal Drug Testing Regulations

7. As of January 1, 1996, companies which operated heavy equipment on public highways were required by the U.S. Department of Transportation to comply with certain portions of the Federal Motor Carrier Safety Regulations, 49 CFR 382.101 et seq. ("the Regulations"). Under the Regulations any person required to have a commercial driver's license ("CDL") must submit to controlled substances (drug) testing under certain circumstances. These circumstances include when an employee transfers from a position not requiring a CDL to a position requiring a CDL, 49 CFR 382.301.

The Regulations also provide for random drug testing of persons holding a position which requires a CDL, 49 CFR 382.305.

Grievant's Previous Drug Use

8. In 1996, EACC posted a notice for the position of Mobile Equipment Operator on a road crew which maintains haulage roads ("the MEO position"). Mobile Equipment Operators are required to operate equipment with gross vehicle weights of between 32,000 and 55,000 pounds on public roads and highways used by numerous other vehicles including school buses, ambulances and private vehicles. Mr. James E. Smith, an EACC employee and member of Local 1503, bid on and was awarded the MEO position. Because the MEO position requires a CDL, Mr. Smith was required pursuant to the Regulations to provide a urine specimen in accordance with the pre-employment drug testing requirement of the Regulations.

9. On March 25, 1996, Mr. Smith was tested pursuant to the Regulations. The results showed that Mr. Smith tested positive for illegal drug use. EACC suspended Mr. Smith with intent to discharge and discharged him. Mr. Smith grieved his discharge pursuant to the Wage Agreement and the case proceeded to arbitration.

10. Arbitrator Jerome H. Ross heard the case and on April 18, 1996, issued an award ("the Ross Award") returning Mr. Smith to work after a 30-day suspension with no back pay and requiring Mr. Smith to participate in a substance abuse program. In addition, the Ross Award required Mr. Smith to submit to random drug testing at the discretion of EACC or an approved "Substance Abuse Professional" for a period of five years.

Grievant's Subsequent Drug Use

11. In June, 1997, fourteen months after the Ross Award, while Mr. Smith was working as a Mobile Equipment Opera-

tor in the MEO position, Mr. Smith was randomly tested pursuant to the Regulations and the Ross Award. Again Mr. Smith tested positive for illegal drug use. Once again EACC suspended Mr. Smith with intent to discharge and discharged him.

12. As a result to this discharge, Mr. Smith again filed a grievance which was processed in accordance with the provisions of Article XXIII of the Wage Agreement. A hearing was held before Arbitrator Jerome T. Barrett on July 28, 1997. At the hearing, both District 17 and Local 1503 (collectively "the Union") and EACC were permitted to present testimony, introduce exhibits, cross-examine witnesses, and present arguments. The Union admitted that Mr. Smith failed the June, 1997 drug test, but contended that mitigating circumstances made the penalty of discharge too extreme.

13. At the conclusion of both parties' cases, Arbitrator Barrett issued an oral award, which he confirmed in a written opinion and award dated August 1, 1997 ("the Barrett Award"). A true and correct copy of the Barrett Award is attached hereto as Exhibit A.

14. In the Barrett Award, the arbitrator found that

> The record is clear that the company has made a good faith effort through its employee assistance program to rehabilitate the grievant. . . . It is understandable why the company wants to put an end to this matter by discharging grievant. The liability the company faces when an employee assigned to operate company equipment on public roads is found with drugs in his urine is very real.

(Award at p.4.)

15. Despite these findings, Arbitrator Barrett completely failed to address EACC's right to terminate an employee who fails a drug test for the second time. Arbitrator Barrett also failed to address whether EACC had "just cause" to terminate Mr. Smith.

16. Instead, Arbitrator Barrett ruled as follows:

> The grievance is sustained and the grievant is returned to work October 20, 1997 under the following conditions:
>
> 1. No back pay during this suspension.
>
> 2. The award of Arbitrator Ross in CAS No. 93-17-96-472 is reinstated.
>
> 3. Grievant will reimburse the company and union for the arbitrators' bills in both the Ross case and the instant case.
>
> 4. Grievant will provide the union and the company with a signed, undated letter of resignation which the company may date and accept if grievant tests positive for any illegal drug in the next five years.
>
> 5. During the grievant's suspension period grievant's name shall remain in the company's random drug testing program. If grievant fails to take a required test during his suspension, the company can date and accept his resignation letter.
>
> 6. The company and union may agree that unusual or unforeseen circumstances justify waiving any conditions set forth above. (Award at p. 6)

COUNT I

17. Paragraphs 1 through 16 are hereby incorporated and realleged in this Count I.

18. Clear, positive law, including the Regulations, evidence a well defined and dominant public policy against the performance of safety sensitive tasks while under the influence of drugs.

19. Because the Barrett Award refuses to allow EACC to discharge Mr. Smith for testing positive for illegal drug use while employed in the MEO position, and requires EACC to

reinstate Mr. Smith to the MEO position following Mr. Smith's having tested positive for illegal drug use, the Barrett Award violates the well-defined and dominant public policy against performance of safety-sensitive jobs while under the influence of illegal drugs.

20. Because the Barrett Award clearly violates this public policy, it does not draw its essence from the Wage Agreement and it must be vacated.

COUNT II

21. Paragraphs 1 through 16 are hereby incorporated and realleged in this Count II.

22. By failing to address "just cause" to discharge Mr. Smith as required by the Wage Agreement, the Barrett Award ignores the plain language and exceeds the authority granted to the Arbitrator under Article XXIV(d) of the Wage Agreement.

23. Because the Barrett Award ignores the plain language of Article XXIV(d) of the Wage Agreement and exceeds the Arbitrator's authority, it does not draw its essence from the Wage Agreement and, therefore, is invalid and unenforceable and must be vacated.

COUNT III

24. Paragraphs 1 through 16 are hereby incorporated and realleged in this Count III.

25. Alternatively, assuming Arbitrator Barrett did consider the issue of just cause, he found just cause existed. Upon such a finding, by the plain language of the Agreement, only discharge is appropriate. Any other result, such as the suspension and conditions of employment imposed by Arbitrator Barrett, ignores the plain language and exceeds the authority granted the Arbitrator under Article XXIV(d) of the Wage Agreement.

26. Because Arbitrator Barrett imposed conditions and a suspension which is contrary to the plain language of the Wage Agreement, his Award does not draw its essence from the Wage Agreement and is invalid and unenforceable and must be vacated.

PRAYER FOR RELIEF

WHEREFORE, Eastern prays that the Court enter an Order vacating the Award and granting Eastern such other relief as may be just and proper.

Respectfully submitted,

EASTERN ASSOCIATED
COAL CORPORATION
By Counsel

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Forrest H. Roles

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINA
AT CHARLESTON

C.A. 2:97-0819

EASTERN ASSOCIATED COAL CORP.,
Plaintiff,

v.

UNITED MINE WORKERS OF AMERICA,
DISTRICT 17 AND LOCAL UNION NO. 1503,
Defendants.

ANSWER AND COUNTERCLAIM OF DISTRICT 17, UNITED MINE WORKERS OF AMERICA AND LOCAL UNION 1503, UNITED MINE WORKERS OF AMERICA

COME NOW Defendants District 17, United Mine Workers of America, and Local Union 1503, United Mine Workers of America, (hereafter "Defendants") by the undersigned counsel, and hereby answer Plaintiff's Complaint as follows:

1. Paragraph 1 of the Complaint sets forth conclusions of law which require no response.

2. Defendants admit that Eastern Associated Coal Corporation is a corporation licensed to do business in West Virginia and is an employer engaged in commerce within the meaning of § 152(2)(7) of the Labor Management Relations Act, as amended, 29 U.S.C., §141, *et seq.* ("LMRA") and is signatory to a collective bargaining agreement with the United Mine Workers of America.

3. Defendants admit that District 17 is an unincorporated association within the meaning of the LMRA. Defendants

deny each and every allegation set forth in paragraph 3 of the Complaint that is inconsistent with the foregoing.

4. Defendants admit that Local Union 1503 is an unincorporated association within the meaning of the LMRA. Defendants deny each and every allegation set forth in paragraph 4 of the Complaint that is inconsistent with the foregoing.

5. Defendants admit that the collective bargaining agreement between the parties has the effective dates set forth therein.

6. Defendants admit that the collective bargaining agreement contains a settlement of dispute article set forth as Article XXIII of the 1993 National Bituminous Coal Wage Agreement ("1993 NBCWA").

7. Defendants have insufficient knowledge with respect to the allegations set forth in paragraph 7 of Plaintiff's Complaint and therefore deny each and every allegation set forth therein.

8. Defendants have insufficient knowledge with respect to the allegations set forth in paragraph 8 of Plaintiff's Complaint and therefore deny each and every allegation set forth therein.

9. Defendants admit only that Mr. Smith filed a grievance which proceeded to arbitration. Defendants deny each and every allegation that is inconsistent with the foregoing.

10. Defendants admit that arbitrator Jerome H. Ross issued an award reinstating the grievant. Defendants deny the remaining allegations set forth in paragraph 10 as they attempt to summarize the award rendered by Arbitrator Jerome H. Ross.

11. Defendants have insufficient knowledge with respect to the allegations set forth in paragraph 11 of Plaintiff's

Complaint and therefore deny each and every allegation set forth therein.

12. Defendants admit that Mr. Smith filed a grievance which proceeded to arbitration and that a hearing was held before Arbitrator Jerome T. Barrett on July 28, 1997 and that the parties were permitted to present testimony, introduce exhibits, cross-examine witnesses, and present arguments. Defendants deny each and every remaining allegation set forth in paragraph 12 of Plaintiff's Complaint.

13. Defendants admit only that the award of Arbitrator Jerome T. Barrett speaks for itself.

14. Defendants deny the allegations set forth in paragraph 14 as they seek to summarize the arbitration award of Arbitrator Jerome T. Barrett.

15. Defendants deny each and every allegation set forth in paragraph 15 of Plaintiff's Complaint.

16. Defendants deny each and every allegation set forth in paragraph 16 of Plaintiff's Complaint as it attempts to summarize the arbitration award of Arbitrator Jerome T. Barrett.

17. Defendants deny each and every allegation set forth in paragraph 17 of Plaintiff's Complaint.

18. Defendants deny each and every allegation set forth in paragraph 18 of Plaintiff's Complaint.

19. Defendants deny each and every allegation set forth in paragraph 19 of Plaintiff's Complaint.

20. Defendants deny each and every allegation set forth in paragraph 20 of Plaintiff's Complaint.

21. Defendants deny each and every allegation set forth in paragraph 21 of Plaintiff's Complaint.

22. Defendants deny each and every allegation set forth in paragraph 22 of Plaintiff's Complaint.

23. Defendants deny each and every allegation set forth in paragraph 23 of Plaintiff's Complaint.

24. Defendants deny each and every allegation set forth in paragraph 24 of Plaintiff's Complaint.

25. Defendants deny each and every allegation set forth in paragraph 25 of Plaintiff's Complaint.

26. Defendants deny each and every allegation set forth in paragraph 26 of Plaintiff's Complaint.

AFFIRMATIVE DEFENSES

1. The Complaint must be dismissed because it fails to state a claim upon which relief can be granted.

2. The Court lacks jurisdiction to vacate the arbitration award at issue because the parties have agreed to final and binding arbitration as the sole means of resolving disputes arising under the 1993 NBCWA.

3. Article XXIII of the 1993 NBCWA sets forth that the parties have agreed to resolve disputes exclusively by arbitration without recourse to the Courts. Plaintiff has therefore waived its right to pursue this matter before this Court.

4. The arbitration award at issue draws its essence from the collective bargaining agreement between the parties. Plaintiff may not seek to relitigate factual and legal issues presented to Arbitrator Barrett, in light of this Court's limited scope of review under the *Steelworkers Trilogy.*[1]

---

[1] *Steelworkers* v. *American Mfg Co.*, 363 U.S. 564 (1960); *Steelworkers* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); *Steelworkers* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

WHEREFORE, Defendants respectfully request that this Court:

1. Deny Plaintiff's prayer for relief;

2. Dismiss Plaintiff's action with prejudice and enforce the arbitration award against Plaintiff;

3. Award Defendants' their costs and attorneys' fees;

4. Award such other relief as is deemed just and proper.

COUNTERCLAIM TO ENFORCE FINAL AND BINDING ARBITRATION AWARD

COME NOW Defendants District 17, United Mine Workers of America and Local Union 1503, United Mine Workers of America by the undersigned counsel and hereby file this counterclaim to enforce a valid, final and binding arbitration award, and in support thereof allege as follows against Plaintiff and Counterclaim-Defendant Eastern Associated Coal Corporation (hereafter referred to as the "Employer"):

1. This action is brought by the UMWA pursuant to the provisions of Section 301 of the Labor Management Relations Act of 1947 ("LMRA"), 29 U.S.C. § 185, to enforce a valid, final and binding arbitration award rendered under the terms of the parties' collective bargaining agreement.

2. This Court has jurisdiction over the UMWA's counterclaim under 29 U.S.C. § 185 and 28 U.S.C. §§ 1331 and 1337.

3. District 17, UMWA, is an unincorporated association having its principal office in Charleston, West Virginia. District 17 is a labor organization within the meaning of 29 U.S.C. § 152(5) and 29 U.S.C. § 185, and is engaged in the representation of coal miners in the State of West Virginia for collective bargaining purposes, and as such is party to a collective bargaining agreement with the Employer.

4. Local Union 1503, UMWA, is an unincorporated association and a labor organization within the meaning of 29 U.S.C. § 152(5) and 29 U.S.C. § 185, and is engaged in the representation of coal miners in the State of West Virginia for collective bargaining purposes, and as such is party to a collective bargaining agreement with the Employer.

5. Eastern Associated Coal Corporation is a West Virginia corporation authorized to do business under the laws of the State of West Virginia, and is an employer engaged in interstate commerce within the meaning of 29 U.S.C. §152 (2), (6) and (7), and is signatory to a collective bargaining agreement with the UMWA within the meaning of Section 301 of the Labor Management Relations Act of 1947, as amended, 29 U.S.C. § 185 ("LMRA").

6. The UMWA and the Employer are bound to a collective bargaining agreement known as the 1993 National Bituminous Coal Wage Agreement ("1993 NBCWA"), with effective dates of December 16, 1993 through August 1, 1998. Article XXIII and XXVII of the 1993 NBCWA provide for the final and binding resolution of disputes arising under the collective bargaining agreement through a grievance and arbitration procedure.

7. On July 17, 1997, James Smith, an employee of the Employer and a member of the UMWA, filed a grievance with the Employer alleging that the Employer violated the 1993 NBCWA by suspending Smith with intent to discharge him. Having failed to resolve the grievance, the parties submitted the matter to final and binding arbitration, as required by Article XXIII and XXVII of the 1993 NBCWA.

8. On July 28, 1997, Arbitrator Jerome T. Barrett held a hearing on the grievance, at which time the parties had the opportunity to present evidence, raise objections, argue their positions, present and examine witnesses, cross-examine witnesses, and otherwise fully present their case.

9. On August 1, 1997, Arbitrator Jerome T. Barrett issued an arbitration award which is attached herein as Exhibit 1.

10. Arbitrator Barrett's arbitration award draws its essence from the collective bargaining agreement and is final and binding upon the parties to this action.

WHEREFORE, District 17 and Local Union 1503 pray that judgment and relief be entered against Eastern Associated Coal Corporation, which judgment shall:

a. enforce the final and binding Arbitration Award of Arbitrator Jerome T. Barrett rendered on August 1, 1997;

b. award attorneys' fees and costs to the Counterclaim-Plaintiffs; and

c. award such other relief as this Court deems just and proper.

Respectfully submitted,

DEFENDANTS DISTRICT 17, UNITED MINE WORKERS OF AMERICA AND LOCAL UNION 1503, UNITED MINE WORKERS OF AMERICA,

By Counsel:

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

Civil Action No. : 2:97-0819

EASTERN ASSOCIATED COAL CORP.,
Plaintiff,

v.

UNITED MINE WORKERS OF AMERICA,
DISTRICT 17 AND LOCAL UNION NO. 1503,
Defendants.

REPLY TO COUNTERCLAIM

In reply to the counterclaim, Eastern Associated Coal Corp. ("EACC"), states:

1. Paragraph 1 of the counterclaim does not set forth an allegation and therefore no response is necessary.

2. EACC admits that this Court has subject matter jurisdiction over the Union's counterclaim under 29 U.S.C. § 185 and denies the remaining allegation contained in paragraph 2 of the counterclaim.

3. EACC admits the allegations contained in paragraph 3 of the counterclaim.

4. EACC admits the allegations contained in paragraph 4 of the counterclaim.

5. EACC admits the allegations contained in paragraph 5 of the counterclaim.

6. EACC admits the allegations contained in paragraph 6 of the counterclaim except to the extent that they allege that the award is valid and enforceable.

7. EACC admits the allegations contained in paragraph 7 of the counterclaim except to the extent that they allege the award is valid and enforceable.

8. EACC admits the allegations contained in paragraph 8 of the counterclaim.

9. EACC admits the allegation contained in paragraph 9 of the counterclaim.

10. EACC denies the allegation contained in paragraph 10 of the counterclaim.

11. All allegations of the counterclaim not specifically admitted are denied.

AFFIRMATIVE DEFENSES

1. The counterclaim fails to state a claim upon which relief can be granted.

2. The award cannot be enforced because it does not draw its essence from the contract since the award violates public policy.

3. The Union is not entitled to attorneys' fees and costs.

4. As further affirmative defenses, EACC relies on the matters set forth in its complaint.

Respectfully submitted,

EASTERN ASSOCIATED COAL CORP.
By Counsel

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NATIONAL BITUMINOUS COAL WAGE AGREEMENT OF 1993 (Excerpts)

Article IA—SCOPE AND COVERAGE

* * * *

Section (d) **Management of the Mines**

The management of the mine, the direction of the working force and the right to hire and discharge are vested exclusively in the Employer.

* * * *

Article III—HEALTH AND SAFETY

Section (a) **Right to a Safe Working Place**

Every Employee covered by this Agreement is entitled to a safe and healthful place to work, and the parties jointly pledge their individual and joint efforts to attain and maintain this objective. Recognizing that the health and safety of the Employees covered by this Agreement are the highest priorities of the parties, the parties agree to comply fully with all lawful notices and orders issued pursuant to the Federal Mine Safety and Health Act of 1977, as amended, and pursuant to the various state mining laws.

Section (b) **Federal Mine Safety and Health Act of 1977, As Amended**

The parties to this contract, finding themselves in complete accord with the FINDINGS AND PURPOSE declared by the United States Congress in section 2 of the Federal Mine Safety and Health Act of 1977 do hereby affirm and subscribe to the principles as set forth in such section 2 of the Act.

(1) In consequence of this affirmation, the parties not only accept their several responsibilities, obligations and duties imposed by the Federal Mine Safety and Health Act, but freely resolve to cooperate among each other and with the

responsible officials of federal and state governments in determined efforts to achieve greatly improved performance in coal mine health and safety.

(2) Neither party waives nor repudiates any administrative, procedural, legislative, or judicial rights under or relating to the Federal Mine Safety and Health Act of 1977, as amended.

Section (c) **Joint Industry Health and Safety Committee**

There shall be a Joint Industry Health and Safety Committee composed of six members, three to be appointed by the Union, one of whom shall have special knowledge and expertise in coal mine health matters, and three to be appointed by the Employers, one of whom shall have special knowledge and expertise in coal mine health matters. The Committee shall consult with the Mine Safety and Health Administration and/or representatives of the Secretary of Health and Human Services, looking toward review and appropriate development and revision of improved mandatory health and safety standards as provided in section 101 of the Federal Mine Safety and Health Act of 1977. The Committee may also seek such joint consultations with the Mine Safety and Health Administration for discussion of the technical aspects of petitions by the Employer or the Union as provided in section 101(c) of the Act.

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ARTICLE XXIII—SETTLEMENT OF DISPUTES

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Section (c) **Grievance Procedure**

Should differences arise between the Mine Workers and an Employer as to the meaning and application of the provisions of this Agreement, or should differences arise about matters not specifically mentioned in this Agreement, or should any local trouble of any kind arise at the mine, an earnest effort

shall be made to settle such differences at the earliest practicable time.

Disputes arising under this Agreement shall be resolved as follows:

(1) The Employee will make his complaint to his immediate foreman who shall have the authority to settle the matter. The foreman will notify the Employee of his decision within 24 hours following the day when the complaint is made. Settlements or withdrawals at this step shall not constitute a precedent in the handling of other grievances.

(2) If no agreement is reached between the Employee and his foreman. the complaint shall be submitted on the BCOA-UMWA Standard Grievance Form and shall be taken up within five working days of the foreman's decision by the Mine Committee and mine management. Where the committee consists of more than three (3) members, the Employer shall have the right to meet with a maximum of three (3) (to be chosen by the Mine Committee). Within five working days after the complaint is taken up by them, the committee and management will complete the standard grievance form and, if the complaint is not settled, the grievance shall be referred to a representative of the UMWA district, designated by the Union, and a representative of the Employer.

(3) Within seven working days of the time the grievance is referred to them, the district representative and the representative of the Employer shall meet and review the facts and pertinent contract provisions in an effort to reach agreement. Members of the Mine Committee shall have the right to be present. No verbatim transcript of the testimony shall be taken. Neither the district representative nor the Employer representative shall be persons who participated in steps 1 or 2 of this procedure.

(4) In cases where the district representative and the representative of the Employer fail to reach agreement, the matter shall, within 10 calendar days after referral to them, be referred to the appropriate district arbitrator who shall decide the case without delay. Cases shall be assigned to district arbitrators in rotation. The parties agree that the expeditious processing of grievances is a major function of this Article, and that consolidation of cases before a single arbitrator can aid in achieving that goal, and where applicable, this procedure should be given serious consideration.

Therefore, in order to expedite the proccessing of grievances awaiting arbitration, the parties may agree that grievances pending arbitration concerning the same operation of the Employer for which an arbitrator has not been assigned, shall be assigned to a single arbitrator if such cases can be heard on the same day, at the same place. Hearings shall take place at a location mutually agreed upon by the parties. If the parties are unable to agree upon a hearing place, the umpire shall select the place. At the earliest possible time, but no later than 15 days after referral to him, the arbitrator shall conduct a hearing in order to hear testimony, receive evidence and consider arguments.

In cases in which the parties have agreed that there is no question of fact involved in the grievance, the arbitrator may decide the case upon the basis of a joint statement of the parties and such exhibits as they shall submit. The hearing shall be recorded by the arbitrator and shall be closed upon the completion of testimony. The arbitrator shall render his decision as soon after the close of the hearing as may be feasible. To avoid delays in the issuance of decisions, post hearing briefs will not be permitted except in cases where the arbitrator determines that such briefs are necessary for a full understanding of the matter before him. If the arbitrator is unable to make his decision within 30 days of the close of the hearing, he shall promptly advise the parties of the reasons for

the delay and the date when his decision will be submitted. The arbitrator's decision shall be final and shall govern only the dispute before him. Expenses and fees incident to the service of an arbitrator shall be paid equally by the Employer affected and by the UMWA district affected.

Section (d) **Ten Day Limitation**

Any grievance which is not filed by the aggrieved party within ten (10) working days of the time when the Employee reasonably should have known it, shall be denied as untimely and not processed further.

Section (e) **Earnest Effort to Resolve Disputes**

An earnest effort shall be made to settle differences at the earliest practicable time. Where an Employee makes a complaint during work time, the foreman shall, if requested to do so, and if possible, consistent with continuous production, discuss the matter briefly on the spot.

At all steps of the complaint and grievance procedure, the grievant and the Union representatives shall disclose to the company representatives a full statement of the facts and the provisions of the Agreement relied upon by them. In the same manner, the company representatives shall disclose all the facts relied upon by the company.

Section (f) **Employee's Right to Presence of Member of Mine Committee**

Except where it will interfere with production, an Employee shall be entitled, at his request, to have a member of the Mine Committee present to assist him at any discussion with his foreman held pursuant to section (c)(2) of this Article. If a member of the Mine Committee is present during such discussion, the foreman involved may have another representative of the Employer in attendance.

Section (g) **Right of Grievant to be Present**

The grievant shall have the right to be present at each step of the grievance procedure until such time as all evidence is taken.

Section (h) **Finality of Decision or Settlement**

Settlement reached at any step of the grievance procedure shall be final and binding on both parties and shall not be subject to further proceedings under this Article except by mutual agreement. Settlements reached at steps 2 and 3 shall be in writing and signed by appropriate representatives of the Union and the Employer.

Section (i) **Exclusion of Legal Counsel**

Neither party will be represented by an attorney licensed to practice law in any jurisdiction in steps 1 through 4 of the grievance procedure except by mutual agreement applicable only to a particular case.

Section (i) **Waiver of Time Limits**

By agreement the parties may waive the time limits set forth in each step of the grievance procedure.

Section (k) **Prior Agreement**

Any dispute and/or difference which as of the effective date of this Agreement is in the process of adjustment under the Settlement of Disputes section of the prior Agreement or any dispute and/or difference presented on or after the effective date of this Agreement which is based on the occurrence or nonoccurrence of an event which arose prior to the effective date of this Agreement shall be processed under the procedural provisions of this Agreement and shall be resolved under the applicable provisions of the prior Agreement. Decisions reached under this provision shall be final and binding. All decisions of the Arbitration Review Board rendered prior to the expiration of the National Bituminous

Coal Wage Agreement of 1978 shall continue to have precedential effect under this Agreement to the extent that the basis for such decisions have not been modified by subsequent changes in this Agreement.

Article XXIV—DISCHARGE PROCEDURE

Section (a) **Just Cause Required**

No Employee covered by this Agreement may be disciplined or discharged except for just cause. The burden shall be on the Employer to establish grounds for discharge in all proceedings under this Agreement.

Section (b) **Procedure**

Where management concludes that the conduct of an Employee justifies discharge, the Employee shall be suspended with intent to discharge and shall be given written notice stating the reason, with a copy to be furnished to the Mine Committee. After 24 hours, but within 48 hours, the Employee shall be afforded the right to meet with the mine superintendent or manager. At such meeting, a member or members of the Mine Committee shall be present and, if requested by the Employee or the Mine Committee, a representative of the District shall also be present. When the district representative requests, the forty-eight hour time limit will be extended by an additional 48 hours. The Employer shall be entitled to have an equal number of representatives at the meeting.

Section (c) **Suspension**

If the Employer informs the Employee at the meeting between the Employee and the mine superintendent or manager that he still intends to discharge the Employee (or if no meeting was requested), the Employee remains suspended with intent to discharge for a period of time necessary to permit him to file a grievance and have it arbitrated. If the Employee does not file a grievance within five days of the no-

tice of suspension with intent to discharge, the discharge shall become effective immediately.

Section (d) **Immediate Arbitration**

(1) If the District believes that just cause for discharge does not exist, it shall arrange with the Employer for immediate arbitration of the dispute, bypassing steps one through three of the grievance procedure.

(2) The next available district arbitrator shall immediately be assigned to hear the case.

(3) The appropriate district arbitrator shall hear the case within five days. At the conclusion of the hearing, the district arbitrator shall at that time announce his decision which shall be binding on all parties. Following the hearing, the arbitrator shall forthwith reduce his decision to writing within 10 days. If the arbitrator determines that the Employer has failed to establish just cause for the Employee's discharge, the Employee shall be immediately reinstated to his job. If the arbitrator determines that there was just cause for the discharge, the discharge shall become effective upon the date of the arbitrator's decision.

Section (e) **Regular Arbitration**

If neither the Employee nor the Mine Committee request immediate arbitration, the Employee shall be discharged at the conclusion of the fifth day of his suspension, and his case shall be processed in accordance with the provisions of Article XXIII (Settlement of Disputes).

Section (f) **Compensation for Lost Earnings**

In all cases where it is determined that just cause for discharge has not been established, the Employee shall be reinstated and compensated for lost earnings at his applicable straight and premium time rates prior to discharge. Provided,

however, that such case shall be taken up within five (5) days from the date of discharge.